

Wednesday, December 17, 2008

The Board met at its offices at 450 N Street, Sacramento, at 9:35 a.m., with Dr. Chu, Chair, Ms. Yee, Vice Chairwoman, Mr. Leonard and Ms. Steel present, Ms. Mandel present on behalf of Mr. Chiang in accordance with Government Code section 7.9.

**SALES AND USE TAX APPEALS HEARINGS****ABC-NACO, Inc., 167411 (OH)**

1-1-99 to 10-17-01, \$881,115.31 Tax

For Petitioner:

Brian Greenburg, Representative

For Sales and Use Tax Department:

Scott Lambert, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether further adjustments are warranted to the disallowed sales for resale because the sales were actually for resale or because the purchaser self-reported use tax.

Whether further adjustments are warranted for trade-ins.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision, granting the petitioner 30 days to file supporting documents, the Department 30 days to respond, and the Appeals Division 30 days thereafter to review the petitioner's supporting documents, the Department's response and provide its recommendation to the Board.

**R.C.P. Block & Brick, Inc., 283573, 283514 (FH)**

1-1-01 to 12-31-03, \$73,108.00 Tax, \$80,726.79 Claim for Refund

For Petitioner/Claimant:

Jesse McClellan, Representative

Dan Davis, Representative

For Sales and Use Tax Department:

Cary Huxsoll, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether petitioner was leasing pallets and correctly reporting tax on such leases.

Whether petitioner is entitled to relief based on its reliance on alleged erroneous advice in prior audits.

Whether the claim for refund should be granted.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

**SPECIAL TAXES APPEALS HEARING****Fassel M. Elder and Amal Elder, 272656 (MT)**

10-1-00 to 3-05-02, \$18,621.87 Underground Storage Tank Maintenance Fee, \$1,862.19

Negligence Penalty

For Petitioner:

George Fakhouri, Representative

For Property and Special Taxes Department:

Carolee Johnstone, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether an adjustment should be made to the assessed Underground Storage Tank Maintenance fees.

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Whether petitioner was negligent.  
Action: The Board postponed this matter to the January Board meeting.

## **PUBLIC HEARINGS**

### **Timber Yield Tax Rate**

Robert Ingenito, Chief, Research and Statistics Section, Legislative and Research Division, made introductory remarks. Revenue and Taxation Code, section 38202 requires that the Board adjust the timber yield tax rate in December of each year to the nearest one-tenth of one percent for the next calendar year. The adjustment is to be in the same proportion as the change from the previous tax year to the present one of the average general property tax rate in the rate adjustment counties (Exhibit 12.6).

Speakers were invited to address the Board, but there were none.

Action: Upon motion of Mr. Leonard, seconded by Ms. Steel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered to adopt the adjustment to the timber yield tax rate.

Exhibits to these minutes are incorporated by reference.

### **Timber Harvest Values**

Benjamin Tang, Principle Property Appraiser, County Assessed Properties Division, Property and Special Taxes Department, made introductory remarks. On or before December 31, 2008, the Board shall estimate the immediate harvest values of and adopt schedules for timber harvested between January 1, 2009 and June 30, 2009. (Rev. & Tax. Code, § 38204.) (Exhibit 12.7.)

Speakers were invited to address the Board, but there were none.

Action: Upon motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered to adopt the timber harvest values.

Mr. Leonard directed staff to revisit this issue mid year and added that there may be a need to convene the committee and look at the values midterm or sooner than expected due to the economy.

### **Proposed Amendments to Sales and Use Tax Regulations 1506, *Miscellaneous Services Enterprises* and 1524, *Manufacturers of Personal Property***

Robert Tucker, Tax Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding the adoption of proposed amendments to clarify the application of tax to alteration charges (Exhibit 12.8).

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Speakers were invited to address the Board, but there were none.

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board adopted the proposed amendments.

**Proposed Amendments to Sales and Use Tax Regulation 1705, *Relief from Liability***

Christine Bisauta, Tax Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding the adoption of proposed amendments to provide a franchisee relief from liability to pay tax based on erroneous advice provided to a franchisor under certain conditions (Exhibit 12.9).

Speaker: Lindsay Craine, Executive Assistant, Color Me Mine (Exhibit 12.10)

Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board adopted the proposed amendments.

**CHIEF COUNSEL MATTERS**

**RULEMAKING**

**Petition to Adopt a Regulation to Designate Qualified Veteran Itinerant Vendors as Consumers of Tangible Personal Property**

Carla Caruso, Senior Tax Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding the taxpayer's petition to adopt a new regulation providing that an itinerant vendor, who is a qualified United States veteran, is the consumer, not the retailer, of goods that the veteran sells (Exhibit 12.11).

Speaker: William M. Connell, Owner, All American Surf Dog

Action: Upon motion of Ms. Yee, seconded by Dr. Chu and duly carried, Dr. Chu, Ms. Yee, Ms. Steel and Ms. Mandel voting yes, Mr. Leonard voting no, the Board directed staff to submit an opinion request to the Attorney Generals office raising the question as to who has rulemaking authority over matters such as this; citing the Brooks decision, history and intent of the current veterans statue, the 1872 and 1893 acts, and any representations that have been made by the Department of Veterans Affairs as it relates to tax exemptions. Once a response is received, staff will report back to the Board with the opinion of the Attorney Generals office. Should the Attorney Generals office state that the Board has rulemaking authority, the Board would like staff to prepare and present a draft regulation. If the Attorney Generals office denies that the Board has authority, then this petition would be deemed denied.

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The Board directed staff to accept the petition for removal of annotation 410.0900, and follow the procedures for this type of petition. Staff additionally was directed to notify the Attorney General's office that the annotation is undergoing a review by the Board and once it has been completed the Board will submit its review to the Attorney General.

**Proposed Amendment to Conflict of Interest Code, Regulation 6001, *General Provisions***

Blanca Breeze, Senior Tax Counsel, Settlement Division, Legal Department, made introductory remarks regarding the proposed amendment to Title 18 California Code of Regulations Section 6001, which represents the Board's Conflict of Interest Code. The proposed changes reflect the classification and organization changes that have taken place at the Board since the Conflict of Interest Code was last amended (Exhibit 12.12).

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved the proposed amendment.

Ms. Yee congratulated Ms. Breeze on her retirement and wished her the best.

**Proposed Amendments to Sales and Use Tax Regulation 1620, *Interstate and Foreign Commerce***

Tim Treichelt, Tax Counsel, Settlement Division, Legal Department, made introductory remarks regarding the section 100 amendments proposed to reinstate provisions for a 12-month test to demonstrate that a vehicle, vessel, or aircraft was purchased for use out of state (Exhibit 12.13).

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved the proposed amendments.

Ms. Steel requested that staff plan an outreach to educate taxpayers on the changed regulation.

**Proposed Amendments to Sales and Use Tax Regulation 1502, *Computers, Programs, and Data Processing***

Robert Lambert, Assistant Chief Counsel, Legal Affairs Division, Legal Department, made introductory remarks regarding the authorization to publish a proposed amendment to Regulation 1502, *Computers, Programs, and Data Processing* (Exhibit 12.14).

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved the proposed amendments.

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**OTHER CHIEF COUNSEL MATTERS****Proposed Amendments to the Rules of Order**

Bradley Heller, Tax Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding the approval of the proposed amendments to the Parliamentary Rules of Order (Exhibit 12.15).

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved the proposed amendments.

**Retired Annuitant - Hiring Delegation**

Kristine Cazadd, Chief Counsel, Legal Department, made introductory remarks regarding the clarification of Resolution Conferring Powers on Executive Director – Hiring Authority over Retired Annuitants (Exhibit 12.16).

Action: Upon motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved the hiring delegation.

**ADMINISTRATIVE SESSION****ADMINISTRATIVE MATTERS, CONSENT**

With respect to the Administrative Matters, Consent Agenda, upon a single motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board made the following orders:

Action: Adopt the following resolutions extending its best wishes on their respective retirements and its appreciation for their service to the State Board of Equalization and the State of California (Exhibit 12.17).

Gary L. Evans, Business Taxes Specialist I, Internal Security and Audit Division,  
Headquarters

Wolfgang Liebelt, Business Taxes Administrator III, San Francisco District  
Office

Hue T. Nguyen, Office Technician, Special Procedures Section, Headquarters

Robert Wils, Supervising Tax Auditor II, Audit Determination and Refund  
Section, Headquarters

Action: Approve the Board Meeting Minutes of October 28-29, 2008.

Action: Approve the proposed revisions to Compliance Policy and Procedures Manual Chapter 4, Security (Exhibit 12.18).

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Action: Approve the adjustment of sales tax prepayment rate on motor vehicle fuel, diesel fuel and jet fuel (Exhibit 12.19).

## **ADOPTION OF BOARD COMMITTEE REPORTS AND APPROVAL OF COMMITTEE ACTIONS**

### **Legislative Committee**

Action: Upon motion of Dr. Chu, seconded by Ms. Yee and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved the Legislative Committee report and the actions therein (Exhibit 12.20).

Committee votes were as follows:

#### **Property Taxes, 2009 Legislative Proposals, Consent Items**

A recommendation to approve the consent agenda unanimously passed with Ms. Yee, Dr. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes.

These items are as follow:

- Amend Revenue and Taxation Code section 276
- Amend Revenue and Taxation Code section 441
- Amend Government Code section 15641
- Amend Revenue and Taxation Code sections 480.3 and 480.4
- Amend Revenue and Taxation Code section 69 and 69.3
- Amend Revenue and Taxation Code section 214.6

#### **Business Taxes, 2009 Legislative Proposal, Consent Item**

A recommendation to approve the consent agenda unanimously passed with Ms. Yee, Dr. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes. The item is as follow:

Add sections 6591.6, 7655.5, 8876.5, 12631.5, 30281.5, 32252.5, 40101.5, 41095.5, 45153.5, 45154.5, 50112.6, 50112.6, 55042.5, and 60207.5 to the Revenue and Taxation Code.

#### **Business Taxes, Sales and Use Taxes, 2009 Legislative Proposal, Consent Item**

A recommendation to approve the consent agenda unanimously passed with Ms. Yee, Dr. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes. The item is as follow:

Add section 6363.4 to the Revenue and Taxation Code

#### **Administration, 2009 Legislative Proposal, Consent Item**

A recommendation to approve the consent agenda unanimously passed with Ms. Yee, Dr. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes. The item is as follow:

Amend Government Code section 15609

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**OTHER ADMINISTRATIVE MATTERS****Deputy Directors Reports**

Randie Henry, Deputy Director, Sales and Use Tax Department, provided an update on the activities and accomplishments for the Enhancing Collections Task Force including responses to SEIU's May 2008 report titled *SEIU Local 1000 Findings and Recommendations on Methods to Enhance Tax Collections* and an updated Task Force Action Plan (Exhibit 12.21).

Speakers: Leora Hill, SEIU Local 1000, Enhancement Collections Task Force  
Tamekia Robinson, SEIU Local 1000, Enhancement Collections Task Force

Ms. Steel directed staff to inquire about the measures in place to make district offices more taxpayer friendly for walk-ins. Ms. Steel would like staff to look into a system that would help walk-ins know it's their turn; either a number system or a system that displays the taxpayers name.

Mr. Leonard stated that the cities issuing business licenses should work with our field team, sharing information and allowing them access to our lists. The cities could help in efforts to collect taxes, which would be beneficial to the city and the Board of Equalization. Mr. Leonard requested a list of cities who are and aren't reluctant to help. Additionally, staff should then see where we can work together to ensure that every retailer is a permit holder.

Randie Henry, Deputy Director, Sales and Use Tax Department, provided an update regarding the issue paper 08-014, Proposal to Raise the Threshold for Board Member Approval of Refunds in Excess of \$50,000 (Exhibit 12.22).

Action: Mr. Leonard moved that the threshold be raised to \$100,000 and revise the issue paper to include all of the Members concerns as well as the background of the issue paper. The motion failed for lack of a second.

The Board asked that the matter be brought back at the March meeting after addressing additional information on all related pieces and what the various options would be.

**ADOPTION OF BOARD COMMITTEE REPORTS AND APPROVAL OF COMMITTEE ACTIONS****Customer Services and Administrative Efficiency Committee**

Action: Upon motion of Mr. Leonard, seconded by Ms. Steel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved the Customer Services and Administrative Efficiency Committee report (Exhibit 12.23).

The Board recessed at 12:30 p.m. and reconvened at 1:30 p.m. with Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel present.

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## **ANNOUNCEMENT OF CLOSED SESSION**

The Board recessed at 1:30 p.m. and reconvened immediately in closed session with Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel present.

## **CLOSED SESSION**

The Board met to discuss pending litigation (Gov. Code § 11126(e), 11126(e)(2)(B)(i)) and personnel matters (Gov. Code § 11126(a)).

The Board recessed at 2:20 p.m. and reconvened immediately in open session with Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel present.

## **OTHER ADMINISTRATIVE MATTERS**

### **Deputy Directors Reports**

Elizabeth Houser, Deputy Director, Administration Department, made introductory remarks regarding the request for approval of contracts over \$1 million (Exhibit 12.24).

Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved the contracts.

Mr. Leonard directed staff that an additional notice be sent to vendors who have contracts over \$1 million notifying them of possible fiscal cuts that the Board may be directed to make.

Elizabeth Houser, Deputy Director, Administration Department, provided a facilities update regarding the New York office relocation, the status of the on-going projects at headquarters and the building repair costs provided by the Department of General Services (Exhibit 12.25).

Elizabeth Houser, Deputy Director, Administration Department, provided a fiscal update regarding the budget update for 2008/09, 2009/10, the 2010/11 budget preparation tentative schedule and the governor's special session for the 2008/09 budget (Exhibit 12.26).

The Board directed staff to present its findings on potential furloughs and lay offs to the Legislature and the Department of Finance.

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**LEGAL APPEALS MATTERS, ADJUDICATORY**

Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that its previous motions to grant the petitions for hearing for *Cities of Torrance and Los Angeles, 469251; Cities of South San Francisco and Los Angeles, 469250; County of Los Angeles, 469243; Cities of Pomona and Los Gatos, 469261; City of Compton, 469256; and, City of Union City, 469296*, be expunged.

Upon motion of Mr. Leonard, seconded by Ms. Steel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board granted the petitions for hearing for *Cities of South San Francisco and Los Angeles, 469250; County of Los Angeles, 469243; Cities of Pomona and Los Gatos, 469261; and, City of Union City, 469296*.

Upon motion of Mr. Leonard, seconded by Ms. Steel and duly carried, Dr. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Ms. Yee voting no, the Board granted the petitions for hearing for *Cities of Torrance and Los Angeles, 469251, and City of Compton, 469256*.

**SALES AND USE TAX APPEALS HEARING**

R. Nuri Otus, 308720 (BH)

10-1-03 to 12-31-03, \$143,252.36 Tax, \$9,906.30 Late Payment Penalty

For Petitioner: No Appearance

For Sales and Use Tax Department: Carla Caruso, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether taxpayer is personally liable under as a responsible person under Revenue and Taxation Code section 6829 for the unpaid liability of Realm Connect Corporation, bda Auctionner.com.

Whether taxpayer has established reasonable cause to relieve the late-payment penalty assessed against the corporation for which petitioner was held personally liable.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Mr. Leonard directed staff to notify the taxpayer if his intentions are to petition for a rehearing, then petitioner needs to present his case in front of the Board personally when the Board considers the petition for rehearing.

**FINAL ACTION ON SALES AND USE TAX APPEALS HEARING HELD DECEMBER 17, 2008**

R.C.P. Block & Brick, Inc., 283573, 283514 (FH)

Final Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

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The Board adjourned at 2:55 p.m.

*The foregoing minutes are adopted by the Board on March 17, 2009.*